

Meeting Minutes
Construction Underground Economy Advisory Committee (CUEAC)
April 15, 2014
1:00 – 3:00 pm
Tumwater, WA

Attendees:

Debby Abe, Patrick Connor, Kerry Cox, Don DeMulling, Allison Drake, Joan Elgee, Mike Foley, Jan Himebough, Jim King, Tom Kwieciak, Mark Martinez, Melissa McBride, Ni McMullin, David Myers, Doric Olson, Alan Paja, Shari Purves-Reiter, José Rodriguez, Dean Simpson, Elizabeth Smith, Josh Swanson, Allen Thurston

Agenda Item	Discussion
Opening Remarks Introductions	Allen Thurston – L&I <ul style="list-style-type: none"> Welcome Housekeeping items, restrooms, evacuation, earthquake, rules of engagement, electronic devices silenced. Introduction of Allison Drake, Management Analyst 5 for Fraud Prevention & Labor Standards Allison Drake – L&I <ul style="list-style-type: none"> Safety Topic: Earthquake Safety.
Review of 12/18/13 CUEAC Meeting	Elizabeth Smith – L&I <ul style="list-style-type: none"> Recap of discussion items, highlighting the CUEAC Executive Summary document.
Review of Executive Summary Document and Action Items	Allen Thurston – L&I <u>Action Item: Internal training scheduled for L&I auditors on how to clearly and consistently apply independent contractor laws in workers' compensation.</u> <ul style="list-style-type: none"> Status: Phase 1 of the internal training has been completed. Phase 2 will be related to training for auditors and employers in the field. More in-depth, specific training. Detection, Tracking and Outreach is working with Field Audit to complete the training. An independent contractor steering committee has been created. The Department wants to be able to start having consistency with the information. The committee will work towards educating, bolstering council members, etc. Dave Myers – Washington State Building & Construction Trades Council <ul style="list-style-type: none"> Is the steering committee internal? Allen Thurston – L&I <ul style="list-style-type: none"> Yes, it's internal. But it will include all divisions within the agency.

	<p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • We are still seeking input from stakeholders on committee matters. We want to ensure that the training for both internal and external audiences is the same. The basic core messages will be the same on both the inside and the outside. <p>Allen Thurston – L&I</p> <ul style="list-style-type: none"> • Contractor Days is a way of providing external trainings and information dissemination. <p>Tom Kwieciak – Building Industry Association of Washington</p> <ul style="list-style-type: none"> • Can you share the common cases with external stakeholders so that we’re aware of ongoing issues? If you let us know, then we can let our members know if there are ongoing issues that keep coming up. <p>Allen Thurston – L&I</p> <ul style="list-style-type: none"> • We can most certainly do that. <p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> • We do have some bulletins that come out to augment that information. <p>Allen Thurston – L&I</p> <ul style="list-style-type: none"> • We have a safety contractor bulletin. What we’re going to do is include inserts in this bulletin. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • We suspect that internal trainings have been inconsistent. If you’re seeing inconsistencies in these scenarios, please let us know. <p>Allen Thurston – L&I</p> <ul style="list-style-type: none"> • If you see these inconsistencies, we would like to know so that we can resolve the issue. <p>Tom Kwieciak – Building Industry Association of Washington</p> <ul style="list-style-type: none"> • There’s a lot of legislative interest as to whether or not the existing law is clear enough. There’s some concern about whether or not people know enough to be able to determine if they’re an independent contractor. <p>Dave Myers- Washington State Building & Construction Trades Council</p> <ul style="list-style-type: none"> • We need to stay away from that. We need to stay on the administrative side. Would it be possible to do a narrative of an example of a misclassification that you commonly run into? That way, people can get an idea of what you’re seeing, and how to make a determination. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Depending on when you came on with the agency, your training might dictate how you apply the 6- and 7- part construction test. In January, we had an upgraded journey level training where we put all of our auditors, managers, etc. with the same trainers, materials, etc. in an effort to make sure that the test is getting applied the same way throughout the state. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • We did this trying to use a story format. We went to the board to try and get an idea of what these stories were, and to make it more of a scenario-based approach.
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	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> First we wanted to get everyone internally on board to make sure everyone is on the same page. Now that that has been done, we are externally focused to provide training. <p>Shari Purves-Reiter – L&I</p> <p><u>Action Item: Explore use of IRS data for detection purposes.</u></p> <ul style="list-style-type: none"> The Detection, Tracking and Outreach unit just finished their internal audit items on April 14, 2014. <p>Elizabeth Smith – L&I</p> <p><u>Action Item: L&I, Employment Security Department (ESD) and Department of Revenue (DOR) currently share data and referrals across agencies.</u></p> <ul style="list-style-type: none"> L&I has a sharing agreement with the U.S. Department of Labor (DOL). As we continue to do this, we identify new ways that we can be doing things. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> We are looking at also having a master agreement with DOR and ESD to have a sharing agreement with the U.S. DOL. <p>Josh Swanson - International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> What the DOL tells us is that they won't accept a case once L&I has accepted it. Would that preclude the agreement? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> Often, entities get confused between the U.S. DOL and L&I, and the difference between state and federal. We try not to step on each other's toes. We don't have a policy. It occurs more on a case by case basis. <p>Josh Swanson – International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> Was there something that happened with the IRS that made it so that L&I could gain the ability to access the information and share it? <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> It was long-running process. They used to send the data, but it was so restrictive we could barely use it. We just had an internal audit, and we have some very minor steps left to meet the standards, such as cubicle reconfiguration. But we seem to have met all of their security requirements, and it seems eminent that we'll be able to use it and perform cross-matching. <p>Elizabeth Smith – L&I</p> <p><u>Action Item: Provide external training on the application of independent contractor laws in workers' compensation.</u></p> <ul style="list-style-type: none"> This will be the training that we want to provide externally so that they get the exact same training as our internal auditors. This will clarify what we look at, what court cases we apply, etc. regarding independent contractors. <p>Allen Thurston – L&I</p>
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	<ul style="list-style-type: none"> • We're building the mechanisms to offer this training in real-time on the internet. These training modules will allow anyone to train. We are also identifying what the training will look like, such as what the common problems are that we find in the field. We offer a workshop at our Contractor Training Days. <p>Mike Foley – Spokane Building Trades</p> <ul style="list-style-type: none"> • With this training, are you going to be training how to get a workers' compensation account if the business is from out of state? <p>Allen Thurston – L&I</p> <ul style="list-style-type: none"> • I've yet to come across that with local contractors. We haven't provided that as of now in the training, but it's something that we could maybe work to provide in Q&A and/or future meetings. <p>Kerry Cox – National Federation of Independent Business</p> <ul style="list-style-type: none"> • Can each of these sessions be videotaped and made available online as a module? <p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> • There isn't consistency in what the nature of the sessions is like. Sometimes it's more give and less take, and vice versa. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Having modules available for some of these frequently confused topics is definitely something we want to look into doing. <p>Shari Purves-Reiter – L&I</p> <p><u>Action Item: Continue to support the ProtectMyHome.net website by advertising.</u></p> <ul style="list-style-type: none"> • Once we have some ideas for next year's campaign, we'll offer those to the group for feedback. <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • Shari is going to work with Construction Compliance to try and get referrals to the Washington International Codes Council (ICC), and to get a communications plan in place. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • What's the expectation coming out of the meetings with the ICC? <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • To coordinate referrals coming in. <p>Shari Purves-Reiter- L&I</p> <p><u>Action Item: Launch of the Verify lookup app, which provides a web portal for checking out a contractor.</u></p> <ul style="list-style-type: none"> • We have a list of eight or nine service requests that we're working through. The general feedback has been good. <p>Alan Paja - Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • I got a couple questions from staff. It didn't seem like the old website portal allowed you to look up an owner and see what other company ownerships they've held. <p>Shari Purves-Reiter – L&I</p>
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	<ul style="list-style-type: none"> • It's still there. It's just located in a different spot. <p>Dave Myers - Washington State Building & Construction Trades Council</p> <ul style="list-style-type: none"> • When you request to track a business, do you receive regular updates? <p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> • You get a letter that lets you know where the company stands, if they've gotten behind, etc. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • If you want to make sure if someone is staying in compliance, it's a great feature for that. We'll send you a letter if there are any issues. <p>Elizabeth Smith – L&I</p> <p><u>Action Item: Create the agency level effort to review violation consequences, identify gaps and implement changes.</u></p> <ul style="list-style-type: none"> • As a part of Goal 4, we are identifying if there's an escalation strategy for increasing consequences for repeat offenses, if the consequences are working, if there are areas where the Department isn't taking the correct action, etc. <p>Dave Myers – Washington State Building & Construction Trades Council</p> <ul style="list-style-type: none"> • Are those rules set in statute? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • We're looking at them on a program by program basis. Construction Compliance was the test program. We really looked at how it's working. The program worked with their field staff to see what they're doing now and to examine the data to see if it's really working. After that, they came up with a list of recommendations for looking forward. <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • We haven't built an escalation strategy yet. We've been looking at what you do when you get to the various different pieces. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • We have penalty levels that we follow, but once you've dealt with an unregistered constructor enough times, when do we say that we're going to take it to the next level and take the criminal prosecution route? When do we prosecute? Is it in cases where we have significant consumer harm? And then we need to train the staff to gather this information. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • We're currently working with the Attorney General to develop strategies. In most programs, the law lays out what the program should do. We need to identify a reasonable way to utilize the statutory authority. <p>Alan Paja - Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • Is the King County Prosecutor still prosecuting crimes?
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	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Yes. We have two Attorney Generals who are dedicated for criminal prosecution of workers' compensation cases. We distribute press releases about cases, and put out information. We've asked these AG's if they could start doing contractor compliance cases, Division of Occupational Safety and Health (DOSH) cases, etc. The Department needs to determine what the cases are that we want to spend the time focusing on. <p>Patrick Connor - National Federation of Independent Business</p> <ul style="list-style-type: none"> • What data is being used within these programs to identify what the problems are? What kind of verifiable data is being used? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • We ask the programs to bring us data. We look at how many criminal prosecutions there are, etc. <p>Patrick Connor - National Federation of Independent Business</p> <ul style="list-style-type: none"> • If I'm in DOSH, there are going to be certain employers that have multiple claims against them. But that doesn't address the small people who go out and perform side jobs, which affect us because they aren't paying taxes. It results in unfair competition. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • We are going to have to rely on the Attorney General to make a determination as to whether or not they want to take the case. We have to be able to prove whether or not it meets the threshold for prosecution. <p>Kerry Cox – National Federation of Independent Business</p> <ul style="list-style-type: none"> • Is there a level that can be set for compliance auditor trainers across the Department? Is there a disparity in the training that they're getting across the state? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Training is going to be a necessary component of it once gaps are identified. And it's something that we're looking at doing. <p>Alan Paja - Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • It would be interesting if someone from the prosecutor's office could come and talk to us about what it is that they're doing. Unless they can prove theft from a homeowner, they can't really make a case for prosecution. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • This is exactly why we want to get dedicated prosecutors in the AG's office. <p>Alan Paja - Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • What about the number of case results that have occurred over the years? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • When we look at the cost-benefit ratio, we need to look at the communication piece of it because without the communications piece, it's going to be hard to see the results.
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	<p>Patrick Connor - National Federation of Independent Business</p> <ul style="list-style-type: none"> Both King County and the AG need to identify if it's an option. Maybe at the next meeting we can walk through one of the division's gap analysis so that we can get a sense of what's going on in their universe. <p>Shari Purves-Reiter – L&I</p> <p><u>Action Item: Create web pages for customer referral center, including Employment Standards and Prevailing Wage complaints.</u></p> <ul style="list-style-type: none"> We are doing more usability testing. The report contractor.lni.wa.gov page is more of a resource for industry instead of homeowners. We're still taking feedback, and welcome that moving forward. <p>Allen Thurston – L&I</p> <ul style="list-style-type: none"> We offer referral training, so if you want to receive training materials, we have presentations, handouts, etc. that we can send. <p>Dean Simpson – L&I</p> <p><u>Action Item: Each compliance team to conduct four compliance sweeps per year.</u></p> <ul style="list-style-type: none"> The sweeps are all scheduled, and we're working to get them squared away. <p>Dave Myers – Washington State Building & Construction Trades Council</p> <ul style="list-style-type: none"> Are the sweeps in conjunction with the Electrical Program? And what did you get from the sweeps? <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> Six infractions, nine referrals, and I believe a few minor work issues, etc. We are not working in conjunction with the Electrical Program though. <p>Dave Myers – Washington State Building & Construction Trades Council</p> <ul style="list-style-type: none"> What's the frequency? <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> Currently, four per year, per team. If we get more referrals, we might look at doing more. There's no set number, but we'll do whatever amount makes sense. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> The referrals alert us to go where there's likely a problem, instead of just wandering around looking for something. So those referrals are key to our success. <p>Unknown</p> <ul style="list-style-type: none"> How do we educate the consumer on who is and is not a good contractor to work with? Consumers turn to various lists that may not give them an accurate representation of who the contractor is, what kind of work they're doing, etc. A consumer may be ill served by turning to resources other than the Department, which is actually in a position to get them the information they need. <p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> There are parts of the homeowner world where they will just always refer to those resources. There are people who will always go to certain places for references (at the bottom). Then there are the top
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	<p>20% who are educated. So we're focusing on the people in the middle. We're trying to review Yelp, Facebook, Linkedin, etc., on top of Angie's List and Craigslist, for compliance maintenance. We will post messages encouraging people to refer to our website for information on contractors. Getting contractors to market the fact that they're registered is key. The contractors who use the contractor marketing cards say that the cards are working, and they can use them in their marketing materials.</p> <p>Dave Myers – Washington State Building & Construction Trades Council</p> <ul style="list-style-type: none"> • What's ironic is that things like Angie's List, the contractor who is advertising that they're contracted when they're not, gets into trouble. But the list server itself isn't held accountable for allowing posts from contractors who say they're registered when they're not. Is there some way to hold the list servers accountable? Is there a leverage point that can be used to make sure that they're following up on their contractors? <p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> • Angie's List has been more cooperative than a lot of the other resources. <p>Alan Paja - Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • It would be helpful if the Department shared with us the results of their compliance efforts. <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • Regarding our sweep from last weekend in Yakima, there were the following outcomes: 34 contractors checked on 18 jobsites, six infractions cited, three audit referrals, one collection referrals, and two referrals for minor workers. <p>Elizabeth Smith – L&I</p> <p><u>Action Item: L&I provides a brochure on hiring a contractor and homeowner responsibilities.</u></p> <ul style="list-style-type: none"> • We are making these brochures available at local offices. <p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> • As the home show season tapers off, we'll be contacting those offices to check in on the need for additional materials. <p>Shari Purves-Reiter – L&I</p> <p><u>Action Item: Explore potential relationships with and outreach to the real estate industry and home inspectors, real estate home inspectors and lending institutions.</u></p> <ul style="list-style-type: none"> • We are looking at where we can make connections. We have an article in the pipeline for the Department of Licensing that addresses "home flipping." <p>Shari Purves-Reiter – L&I</p> <p><u>Action Item: Outreach to awarding agencies to raise awareness of their statutory obligations.</u></p> <ul style="list-style-type: none"> • We've been doing a series every year with the awarding agencies. We're now extending that to include external training for contractors. We provide information and the rules, obligations, etc. We're trying to touch bases with as many people as possible.
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	<p>Elizabeth Smith – L&I <u>Action Item: Improve web materials explaining prevailing wage and certified payroll requirements.</u></p> <ul style="list-style-type: none"> We're looking to get customers to get explain where their confusions are. We need to make sure that we understand what the problems are before we try to fix them. Having a customer feedback survey will be key in the process. <p>Josh Swanson – International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> Does the funding for the budget package cover payroll to increase staff? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> The funding will fund some improvements to the system. Prevailing Wage Intent & Affidavit system changes and making a public works hub. We are working to improve the information available on our website to decrease the number of higher-level questions that are being referred to program staff. <p>Patrick Connor - National Federation of Independent Business</p> <ul style="list-style-type: none"> Is there any intention to include a tracking measure so that when someone, for example, submits an intent or affidavit, it can be seen throughout the process? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> Our vision is to create a hub where you can see where your project is at in the process. Right now, it isn't electronic, and you have to call around to get questions answered. <p>Josh Swanson – International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> Is the other half of the legislative budget package going to be run again next year? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> We aren't sure yet. We need to identify next steps. <p>Josh Swanson – International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> You're very underfunded right now. What you need is the resources to be able to educate people. That's what the program needs. More funding.
Review of 3/12/14 Underground Economy Work Session	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> Brief overview of the Underground Economy Work Session that occurred in the House Labor and Workforce Develop Committee during legislative session.
Closing Remarks	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> Confirm date and location for upcoming meeting: July 30, 2014, 9:30 am – 11:30 am L&I Headquarter Building, Room S118 7273 Linderson Way SW Tumwater, WA 98501